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8 ABDELFATAH ELLAWENDY,
9 Petitioner,

10 v.
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12 MONTEREY COUNTY SUPERIOR
13 COURT,
14 Respondent.

15 Case No. 20-02708 BLF (PR)

16 **ORDER DENYING DISCOVERY
REQUESTS AS PREMATURE;
GRANTING PETITIONER AN
EXTENSION OF TIME TO FILE
REPLY TO RESPONDENT'S
OPPOSITION TO THE AMENDED
PETITION**

17 (Docket No. 19)
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19 Petitioner, a state parolee, filed a *pro se* petition for a writ of habeas corpus under
20 U.S.C. § 2254, challenging his 2019 state conviction out of Monterey County. Dkt. No.
21 1. The Court found the only cognizable claim in the petition was the claim challenging the
22 voluntary nature of Petitioner's plea and dismissed all other claims. Dkt. No. 6. On
23 January 27, 2021, Respondent filed an answer on the merits. Dkt. No. 12.

24 Nearly six months later on July 8, 2021, Petitioner filed a document entitled
25 "petition for a writ of habeas corpus," Dkt. No. 15, which the Court construed as a motion
26 for leave to file an amended petition. Dkt. No. 16. Because it did not appear that
27 Petitioner served this document on Respondent, the Court provided Respondent an
28 opportunity to file opposition to the filing of an amended petition. *Id.* On October 4,

1 2021, Respondent filed an opposition. Dkt. No. 17.

2 On October 7, 2021, Petitioner filed a “Notice of not receiving the respondent
3 answer,” referring to Respondent’s answer to the original petition filed on January 27,
4 2021. Dkt. No. 19. It matters not at this time that Petitioner did not receive Respondent’s
5 answer since the Court stayed briefing on it due to Petitioner’s filing of an amended
6 petition. Dkt. No. 12 at 2. Petitioner also requests several records involving “reports []
7 filed by the petitioner to CSUMB PD which were expunged in the favor of Carlquest by
8 the DA,” and a subpoena. Dkt. No. 19 at 2. Petitioner is advised that a habeas petitioner,
9 unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of
10 ordinary course. *See Bracy v. Gramley*, 520 U.S. 899, 904 (1997). Furthermore, since it is
11 yet unclear on what claims this action will be proceeding, his discovery requests are
12 premature. Accordingly, the requests are denied at this time.

13 In the court order setting briefing on Petitioner’s motion for leave to file an
14 amended petition, Petitioner was directed to file a reply to Respondent’s opposition within
15 fourteen days of his receipt of the opposition. Dkt. No. 12 at 2. Because he made no
16 reference to Respondent’s opposition in his latest filing, it appears Petitioner had not yet
17 received it when he filed the notice. In the interest of justice, the Court shall grant
18 Petitioner an extension of time to file a reply. Petitioner shall file a reply **no later than**
19 **fourteen (14) days from the date this order is filed**. The motion will be deemed
20 submitted on the date Petitioner’s reply is due.

21 The Clerk shall include a copy of Respondent’s opposition, Dkt. No. 17, with a
22 copy of this order to Petitioner.

23 **IT IS SO ORDERED.**

24 **Dated: October 14, 2021**


BETH LABSON FREEMAN
United States District Judge

25
26 Order Denying Request; Granting EOT to file Reply
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